In the High Court of Punjab and Haryana at Chandigarh

.....

C.W.P. No.7425 of 2006

.....

Date of decision: 10.8.2006

Kuldip Sharma

.....Petitioner

v.

State Bank of Patiala and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. G.K. Chatrath, Senior Advocate with Mrs. Anu Chatrath Kapur, Advocate for the petitioner.

Mr. H.N. Mehtani, Advocate for the respondents.

.....

S.S. Saron, J.

The petitioner in this petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 29.4.2006 (Annexure-P.6) whereby he has been relieved from the Qadian Branch of State Bank of Patiala (`Bank' for short) and instructed to report at his new place of posting at Budhlada Branch which is 300 Kms. away. It is alleged that the said transfer is against the guidelines issued by the respondent Bank. Besides, it is with a mala fide intention to accommodate one Kirpal Singh from Faridkot Branch as he belongs to Batala which is at a distance of 16

Kms. from Qadian.

The petitioner was selected and appointed as a Clerk-cum-Typist by the respondent-Bank. He was posted in the Inspection Department at Head Office Patiala on 15.10.1991. He was working at Qadian Branch when the impugned order of transfer was passed. Earlier the petitioner was working at Chabhal Branch of the Bank in District Amritsar where he had been transferred and had joined on 19.3.1997. As per guidelines of the respondent-Bank, the Award Staff Employees on completion of one and half years of service at one station can send their request for transfer at a place of their choice. Such requests are registered with the Personnel Administrative Department and are dealt with according to merit and subject to availability of vacancy at the station opted for by an employee. The petitioner submitted a request on 19.9.1998 for considering his case for transfer to Amritsar as he has his own house there. He was informed by the head office vide letter dated 29.9.1998 that his request for transfer to Amritsar has been noted at serial No.31. It is alleged that respondent No.4 the Branch Manager of Chabhal Branch where the petitioner was posted was inimical towards him and even otherwise there were complaints against him. In any case, respondent No.4 is stated to be close to the then Assistant General Manager who was promoted as Deputy General Manager. The Assistant General Manager asked the Branch Manager, Chabhal on 7.8.2000 to relieve the petitioner as the petitioner stood transferred from Chabhal to Qadian. The fact that the petitioner had given option for his posting at Amritsar was ignored. The petitioner had in fact joined at Qadian Branch on 25.11.2004 and thereafter made various requests for posting him back to Chabhal

Branch. A meeting of the workmen-Union and the representatives of the Bank was also held on 23.11.2004 and after detailed discussions, it was decided that the transfer would be effected within the district or if the circumstances necessitated the deployment outside the district, the workman could be posted to any branch office of the Bank outside the district upto a distance not exceeding 100 Kms. from the present place of posting. It was also decided that the employees would be repatriated after a period of two to three years. The wife of the petitioner is Principal of a Government School and is posted at Amritsar. The petitioner has two children aged 12 years and 8 years who are studying at Amritsar. Despite these circumstances, the petitioner in terms of the impugned order dated 29.4.2006 has been relieved by the Qadian Branch of the respondent-Bank with instructions to him to report at his new place of posting i.e. Budhlada Branch after availing usual joining time admissible under the rules. The petitioner even though has sufficient balance leave in his leave account but respondent No.2 with the intention to harass him delayed his salary for the period from August to November 2004 which was paid in March 2005 at the end of the financial year. Accordingly, the action of the respondents in transferring the petitioner to a place 300 Kms. from his place of posting is assailed.

On notice of motion, written statement has been filed on behalf of respondents No.1 and 2 by the Assistant General Manager J-II, Zonal Office, State Bank of Patiala, Jalandhar. Separate written statements have been filed by respondents No.3 and 4 respectively. In the written statement filed by respondents No.1 and 2, it is stated that a departmental inquiry was held against the petitioner on charges that ever since his posting at Chabhal

Branch w.e.f. March 1997, the petitioner was openly defying orders of the Branch Manager and provoking other staff members for disobedience. Besides, after transfer from Chabhal Branch to Qadian Branch, the petitioner remained on leave upto 23.11.2004. During this period, he tried to exert political influence through a Member of Parliament of the area who intervened and exerted pressure to get his transfer cancelled. The Member of Parliament, it is stated, enclosed copies of affidavits of complaints filed by various persons against respondent No.4, the then Branch Manager of Chabhal Branch of the respondent-Bank which were confidential and part of the record of the respondent-Bank. This according to respondents No.1 and 2 indicates that the complaints were engineered by the petitioner and the photo copies retained by him were supplied to the Member of Parliament. It is also alleged that in spite of letter dated 13.12.2004 issued by the respondent-Bank a letter through PS to the Chief Minister was received on 2.3.2005 at the Head Office, Patiala for cancellation of the transfer of the petitioner. The petitioner, it is alleged, has been instrumental in generating complaints against the Branch Manager and officials through public which is prejudicial to the growth of the Branch and injurious to the reputation of the Bank. The petitioner nominated one Shri Ashok Kohli, Head Cashier of the respondent-Bank, Batala Road Branch, Amritsar as his working representative to associate him to defend the case in the inquiry pending against him. He duly participated in the inquiry proceedings held on various dates from 15.4.2005 to 1.3.2006. The petitioner produced defence statement and relied upon various documents. The Inquiry Officer submitted the inquiry report dated 21.3.2006 by which the four charges attributed to him

were held to be proved. The petitioner had been supplied with the copy of the inquiry report (Annexure-R.1). It is stated that the aforesaid charges are prima facie prejudicial to the interest of the Bank and tantamount to gross misconduct on the part of the petitioner in terms of Clause 5(b) and 5(c) of the Memorandum of Settlement on Disciplinary Action Proceedings of Workmen signed between Indian Bank Association and Workmen Union on 10.4.2004. However, it is stated that the action would be taken against the petitioner on the basis of the inquiry in due course in accordance with law. It is further stated that the aforesaid departmental inquiry held against the petitioner and reports submitted by the Inquiry Officer have nothing to do with the transfer of the petitioner from Qadian Branch in Amritsar District to Budhlada Branch in Bathinda District. The holding of departmental inquiry regarding misconduct of the petitioner, it is stated, is an action altogether independent of the transfer of the petitioner which was totally based on administrative necessity and also in the administrative interest of the respondent-Bank and also in public interest.

In the separate written statements filed by respondents No.3 and 4 respectively, the allegations as made against the respective respondents have been stated to be false and accordingly denied. It is stated by respondent No.3 that as a matter of fact the petitioner was regularly putting various types of hindrances in the conduct of day to day business affairs at Chabhal Branch of the respondent-Bank inasmuch as he was regularly engineering false and fabricated complaints against the Branch Manager of the said Branch with a view to demoralizing him and keeping him under unnecessary tension and pressure. Therefore, respondent No.3 as Controller

of the aforesaid Branch acting in good faith and in the administrative interest of the respondent-Bank as also the petitioner verbally counselled him during visits to Chabhal Branch of the respondent-Bank. The petitioner was also called to the regional office of the respondent-Bank and counselled to stop engineering complaints against the Branch Manager and work in the interest of the respondent-Bank. The fact that respondent No.4 was close to respondent No.3 has been denied. Respondent No.4 has also denied the allegations as made against him. He has denied the various allegations of his indulging in corruption. It is stated that the customers of the Bank were satisfied with his working. However, the petitioner created indiscipline amongst the other staff of the Branch by putting hindrances in the conduct of the day to day working of the Chabhal Branch of the respondent-Bank.

The petitioner has filed replication to the written statements filed by the respondents and denied the allegations as have been made in the written statements and reiterated those made in the writ petition.

Mr. G.K. Chatrath, Senior Advocate, learned counsel appearing with Mrs. Anu Chatrath Kapur, Advocate for the petitioner submits that the transfer of the petitioner is based on wholly extraneous considerations inasmuch as the petitioner has been transferred with a mala fide intention to a place which is 300 Kms. away with an intention to punish him for the alleged misconduct attributed to him. Therefore, it is contended that the authority ordering transfer of the petitioner has acted in excess of the power vested in it which would warrant interference of this Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

In response Mr. H.N. Mehtani, Advocate, learned counsel

appearing for the respondent-Bank and the other respondents submits that the transfer of an employee from one station to another is merely an incident of service which would not warrant interference of this Court in exercise of its supervisory jurisdiction under Articles 226/227 of the Constitution of India. Besides, it is contended that the transfer has been made keeping in view administrative exigencies, therefore, the petition is liable to be dismissed.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties. The factual position is not much in dispute that the petitioner vide impugned order dated 29.4.2006 (Annexure-P.6) has been relieved from the Qadian Branch of the Bank and asked to join at Budhlada Branch which is 300 Kms. away from Qadian. Besides, earlier to the posting of the petitioner at Qadian, he was working at Chabhal. He was transferred to Qadian vide order dated 7.8.2004 and after availing leave he joined at Qadian on 25.11.2004. In between the petitioner and his father had made representations for transferring him back to Chabhal Branch. It is also not in dispute that the petitioner had made a request for his transfer to Amritsar Branch. There is no dispute to the proposition of law as contended by Mr. H.N. Mehtani, learned counsel appearing for the respondents that transfer of an employee from one place to another is a normal incident of service which does not result in any alterations of the conditions of service of an employee. Besides, no employee can claim posting at a particular place of his choice. Learned counsel in support of his contentions has referred to the case of Deepshikha Jiwan Pandit (Dr.)(Ms.) v. NCERT and others, 2004 (2) RSJ 394 (Delhi) (DB) wherein transfer in respect of a couple made in violation of guidelines was held to not confer any

legally enforceable right on the Government servant. Reference is also made to the case of State of U.P. and others v. Gobardhan Lal, 2004 (2) RSJ 604 (SC) wherein it was held that a transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary in the law governing conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provisions or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. A reference is also made to the case of Arun Chauhan v. State of Rajasthan and others, 2005 (3) RSJ 320 (Rajasthan) (DB) wherein it was held that the Courts are not to interfere unless transfer order is vitiated by mala fide or is made in violation of any constitutional provision. The scope of judicial review in matters of transfer which are administrative decisions is indeed limited and is not to be interfered with unless it is shown to be vitiated by mala fide or is based on other extraneous considerations. The question, therefore, that is required to be seen is whether the transfer of the petitioner has been made only on account of administrative necessity and public interest or whether it is based on other extraneous considerations. In S. Partap Singh v. State of Punjab, AIR 1964 SC 72 it was observed by the majority as follows:-

> "Pausing here, we might summarize the position by stating that the Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own view as to the necessity or

desirability of initiating disciplinary proceedings for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the court is whether the authority vested with the power has paid attention to or taken into account circumstances events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of mala fides, or assess the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the Court from inquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out."

It was further observed:-

"The Constitution enshrines and guarantees the rule of law and Art. 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and we consider that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford

justice to the individual."

Therefore, it is to be considered whether the authority vested with the power to order transfer has taken into account such matters, which are wholly extraneous to the purpose for which the power was vested or whether the transfer of the petitioner is only for administrative exigencies. In the present case in the written statement it has been stated that a departmental inquiry was held against the petitioner in respect of the following charges:-

"i) Ever since his posting at Chabhal Branch w.e.f. March 1997, he was openly defying orders of the Branch Manager and provoking other staff members for disobedience.

ii) After his transfer from Chabhal Brach to Qadian Branch, he remained on leave upto 23.11.2004. During this period, he tried to exert political influence through Sh. Gurjeet Singh Rana, MP of the area who intervened and exerted pressure to get his transfer cancelled. Sh. Rana enclosed copies of Affidavits of complainants filed by the various persons against Sh. R.K. Kalsi, the then Branch Manger of our Chabhal Branch, which were confidential and part of our record indicates that the complaints have been engineered by him (petitioner) and the photo copies retained by him were supplied to Mr. Rana (MP).

iii) Again in spite of our letter No.AGM-III (J)/Staff/C-45 dated 13.12.2004, a letter through S. Malwinder Singh, PS to Chief Minister, Punjab has been received on 2.3.2005 at Head Office, Patiala for cancellation of his transfer.

iv) He has been instrumental in generating complaints against

> the branch and the officials through public which is prejudicial to the growth of the branch and injurious to the reputation of bank."

The above said charges, it has been stated, have been held to be proved by the Inquiry Officer and copy of the report of the Inquiry Officer has been supplied to the petitioner. It is further stated that the aforesaid charges are prima facie prejudicial to the interest of the Bank and tantamount to gross misconduct on the part of the petitioner. However, action would be taken on the basis of the aforesaid inquiry in due course in accordance with law. At the same time it is stated that the aforesaid departmental inquiry against the petitioner and the reports submitted by the Inquiry Officer has got nothing to do with the transfer of the petitioner from Qadian Branch in Amritsar District to the Budhlada Branch in Bathinda District. Besides, it is submitted that holding of departmental inquiry regarding acts of misconduct of the petitioner is an action altogether independent of the transfer of the petitioner which was totally based on administrative necessity and also in the administrative interest of the respondent-Bank as also in public interest. However, at the same time it has also been further stated by respondents No.1 and 2 as follows:-

> "The Bank functions with the cooperation of all its employees. The employees of the respondent-Bank are expected to carry out the orders of the superiors; should not level false allegations against the officers of the Bank nor should prompt the others to make such false allegations, & should not provoke the staff members of the Bank for disobeying the officers of the Bank.

They should not use and exert political influence in the performance of their official duties, should not be instrumental in generating the complaints against the Branch and officials of the Bank which may be prejudicial to the interest and growth of the Branch and injurious to the reputation of the Bank, should work in unison for the growth of the Bank, should at least carry out norms of at least minimum discipline in public interest as well as in the interest of the respondent-Bank. An employee of the Bank has no absolute right to claim to be appointed at a particular place. It was found by the officers of the Bank that the petitioner was not working in the interest of the Bank as well as in public interest. He provoked the staff members for disobedience and thereby created indiscipline in the Bank. He was also responsible in generating complaints against the Branch and the officials, which was contrary to the interest of the branch and also affected the reputation of the Bank. Accordingly, the respondent-Bank acting in good faith and to avoid any harm to the reputation of the Bank decided by way of administrative necessity and in the interest of the Bank as well as public interest to transfer the petitioner from Qadian Branch of the answering-respondent Bank to its Budhlada Branch. It is submitted with all humility at the command of the answering-respondent that aforesaid transfer of the petitioner was not made by way of punishment or by way of mala fide but was made keeping in view the administrative interest, of the Bank by way

of administrative necessity. It is again humbly submitted that aforesaid order of the transfer of the petitioner from Qadian Branch to its Budhlada Branch does not fall within the judicial purview of this Hon'ble Court. The petitioner was relieved of his duties at Qadian Branch on 29.4.2006. The petitioner has concealed the aforesaid material facts in the writ petition from this Hon'ble Court. Therefore, the writ petition deserves to be dismissed."

A perusal of the above pleadings show that the transfer is based on circumstances other than mere administrative interest of the Bank. There are distinct and specific allegations attributed to the petitioner which form the basis and the foundation of his transfer. It has been alleged that the petitioner provokes staff members of the Bank for disobeying officers of the Bank, he exerts political influence in the performance of their official duties, he is instrumental in generating complaints against the Branch and officials of the Bank which are injurious to the reputation of the Bank, he does not carry out norms of at least minimum discipline in public interest as well as in the interest of the Bank, he is not working in the interest of the Bank and he created indiscipline in the Bank. Accordingly, the Bank acting in good faith had transferred him. The transfer of the petitioner which is based on the said allegations would definitely be as a measure of punishment. If the said allegations are there, the management of the respondent-Bank ought to have taken departmental action which in fact is already stated to be under process. However, the transfer of the petitioner on those very charges, in respect of which departmental action is still in process amounts to prejudging the issues

and imposing punishment by way of transfer. Therefore, the said allegations cannot be made the foundation of the transfer of the petitioner and that too at a place 300 Kms. away. In N.S. Bhullar and another v. The Punjab State Electricity Board and others 1991 (1) SLR 378 (P&H) a Division Bench of this Court considered the scope and power of the Court under Article 226 of the Constitution of India to interfere with an administrative order of the Government transferring an employee from one place to another and as to what are the grounds on which interference with such an order permissible. A reference was made to the case; Union of India v. H.N. Kirtania 1989 (3) SLR 9 (SC) wherein it was observed that the transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. It was found that the transfer therein had admittedly been made on the basis of some complaints and adverse remarks. No inquiry had been held and simply on the basis of complaint and suspension the petitioner therein had been transferred whereas the stage regarding these allegations was only that explanation had been called and the matter was pending disposal. There did not seem to be any public interest in transferring the petitioner therein and the power to transfer it seemed had been used for collateral purposes to avoid disciplinary proceedings. Consequently, the transfer was set aside. A reference was also made to a Division Bench of the Calcutta High Court in S.V. Singh v. Union of India and others 1988 (2) SLR 545 wherein it was held as follows:-

> "While it is true that transfer is an incidence of the service of the

> petitioner but that does not mean and imply that the same be applied without any just cause or reason. There must be cogent administrative reasons for such an order of transfer, in the absence of which the Law Courts will strike down the same. It is a powerful weapon in the hands of the administration, but that does not clothe the administration to use it at random and to suit the convenience of same. It must be fair, reasonable and as for administrative reasons. As noted above, it ought not to be used as an alternative to disciplinary proceedings or the order of suspension. If the facts warrant issuance of an order of suspension and initiation of a disciplinary proceeding, the authority ought not to use the strong weapon in its hand by ordering a transfer in lieu thereof and if the Law Courts permit such an action, it cannot but lead to a social catastrophe."

After considering the contentions as raised and the circumstances leading to the transfer, we are of the view that the transfer of the petitioner has been ordered as a measure of punishment in respect of the various allegations that exist against him and which have been spelt out in the written statement itself. In fact, the petitioner has been departmentally proceeded against for the various allegations attributed to him. The respondent-Bank instead of finalizing those charges as made has used the weapon of transferring the petitioner to a distance of 300 Kms. away. Though in the written statement it is submitted that the departmental inquiry held against the petitioner and the reports submitted by the Inquiry Officer have nothing to do with the transfer of the petitioner. However, the very fact that the same

has been so prominently highlighted and yet it is stated that these have nothing to do are quite contradictory to each other. The pleadings and averments as made by the respondents in the written statement which have been noticed above by itself show that the order of transfer has been passed as a measure of punishment. In P. Pushpakaran v. The Chairman, Coir Board, Cochin and another, 1979 (1) SLR 309 (Kerala) it was observed by the Kerala High Court as follows:-

> "The whole difficulty arises when under the cover of ordering a transfer, an employer seeks to achieve something which he cannot otherwise achieve. In such cases, the employees in distress seek the assistances of courts in their unequal contest with their employers. A transfer can uproot a family cause irreparable harm to an employee and drive him into desperation. It is on account of this that transfers when affected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by court."

Therefore, in the circumstances, we are of the view that while ordering the transfer of the petitioner the authority vested with the power has taken into account circumstances and matters wholly extraneous to the purpose for which the power of transfer was vested and the Bank in ordering the transfer of the petitioner has acted in excess of the powers vested in it, which would warrant interference of this Court in exercise of its supervisory jurisdiction under Article 226 of the Constitution of India.

For the foregoing reasons, the writ petition is allowed and the impugned order dated 29.4.2006 (Annexure-P.6) relieving the petitioner is

set aside and quashed. However, nothing stated herein shall be taken as an expression on the merit of the case as regards the disciplinary proceedings which are pending against the petitioner.

(S.S. Saron)
Judge

August 10, 2006. **(S.S. Nijjar)**
Judge

hsp